

Message Text

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PAGE 01 BERN 02160 071628Z

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ACTION EUR-25

INFO OCT-01 ISO-00 FTC-01 EB-11 L-03 COME-00 JUSE-00

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FM AMEMBASSY BERN

TO SECSTATE WASHDC 9131

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E.O. 11652: N/A

TAGS: EGEN, ETRD, SZ

SUBJECT: FTC/NESTLE CASE

REF: A) BERN 1852; B) STATE 76274

1. DURING CONVERSATION WITH VISITING STATE DEPARTMENT OFFICER (GEORGE; EUR/CE) AND EMBOFF JUNE 6, AMBASSADOR JACOBI OF SWISS DIVISION OF COMMERCE REITERATED SWISS HOPE FOR SATISFACTORY SETTLEMENT OF LONG-STANDING FTC INVESTIGATION OF NESTLE ACQUISITIONS OF LIBBY, MCNEIL, AND LIBBY AND STOUFFER. HOWEVER, JACOBI WENT ON TO SAY THAT IN LAST FEW DAYS NESTLE HAS RECEIVED SWISS LEGAL OPINION WHICH WILL NOW ALLOW IT SUBMIT ADDITIONAL MATERIAL TO FTC, PARTICULARLY IN RESPONSE FTC REQUESTS RE NESTLE ACQUISITION OF STOUFFER. JACOBI SAID NESTLE UNDERSTOOD THAT FTC STAFF WOULD IN VERY NEAR FUTURE BE SUBMITTING RECOMMENDATIONS TO COMMISSION BUT WAS CONCERNED THAT PARTICULARLY STOUFFER ASPECT OF CASE MIGHT BE JUDGED WITHOUT ADEQUATE DOCUMENTATION.

2. JACOBI MADE FOLLOWING SUGGESTION:

A. EITHER SEPARATE TWO ASPECTS OF CASE AND MAKE RECOMMENDATION AT THIS TIME ONLY RE NESTLE/LIBBY WHILE DELAYING ANALYSIS OF LATER STOUFFER ACQUISITION UNTIL NEW

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PAGE 02 BERN 02160 071628Z

DOCUMENTS ARE AVAILABLE;

B. OR, ALTERNATIVELY, DELAY ENTIRE INVESTIGATION OF NESTLE ACQUISITION OF BOTH LIBBY AND STOUFFER UNTIL NEW STOUFFER-RELATED MATERIAL CAN BE EVALUATED.

3. IN SUM, JACOBI SAID SWISS MORE CONCERNED THAT INVESTIGATION TAKE ADVANTAGE OF ALL RELEVANT INFORMATION THAT CAN BE PROVIDED RATHER THAN BE BROUGHT TO SPEEDY AND PERHAPS ERRONEOUS CONCLUSION.

4. WE PROMISED TO REPORT FOREGOING CONCERNS BUT DID NOT COMMENT ON MERITS OF JACOBI SUGGESTION.

5. JACOBI ALSO INFORMED US THAT HE HAS OBTAINED AGREEMENT OF NATIONAL COUNCILOR EISENRING THAT WRITTEN RESPONSE BY FEDERAL COUNCIL TO HIS POSTULAT (NON-BINDING RESOLUTION) RE FTC/NESTLE CASE, JUDICIAL ASSISTANCE TREATY, AND OTHER UNSPECIFIED DISCRIMINATION AGAINST SWISS FIRMS IN US WILL BE DELAYED UNTIL FALL PARLIAMENTARY SESSION IN SEPTEMBER (BERN 1176).

6. JACOBI HAS ASKED MEET AGAIN WEEK OF JUNE 10 WITH EMBASSY RE FTC/NESTLE CASE. WOULD APPRECIATE RESPONSE IF POSSIBLE TO SUGGESTIONS MADE BY JACOBI AND STATUS REPORT ON ANY OTHER DEVELOPMENTS SINCE MAY 7 LETTER FROM FTC CHAIRMAN ENGMAN TO DEPARTMENT.
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